

November 2006

MJI Publications Updates

Crime Victim Rights Manual (Revised Edition)

**Criminal Procedure Monograph 6—Pretrial Motions
(Third Edition)**

Domestic Violence Benchbook (3rd ed)

Michigan Circuit Court Benchbook

Update: Crime Victim Rights Manual (Revised Edition)

CHAPTER 8

The Crime Victim at Trial

8.10 Evidence of the Victim's Character

B. Criminal Sexual Conduct Cases

Effective October 1, 2006, 2006 PA 309 created the Self-Defense Act, MCL 780.971 to 780.974, and broadened the instances in which deadly force may be used to include the honest and reasonable belief that the use of deadly force is necessary to prevent imminent sexual assault.

Insert the following text in place of the **Note** near the top of page 212:

Note: To establish self-defense, a defendant must honestly and reasonably believe either that the use of deadly force is necessary to prevent the imminent death of, or imminent great bodily harm to, himself or herself, or that the use of deadly force is necessary to prevent the imminent sexual assault of himself or herself. MCL 780.972.

Update: Criminal Procedure Monograph 6—Pretrial Motions (Third Edition)

Part 2—Individual Motions

6.28 Motion to Suppress the Fruits of an Illegal Seizure of a Person

Discussion

Insert the following text after the next to last paragraph on page 72:

Reasonable suspicion that a person has engaged or is engaging in criminal activity may properly be based on a tip from an anonymous caller, where there is sufficient police knowledge of the identity of the caller to render the call reliable. *United States v Long*, ___ F3d ___ (CA 6, 2006).

In *Long*, the police stopped defendant as he approached the freeway in his truck, after receiving a tip from an anonymous caller advising that a burglary was in process and describing a vehicle similar to defendant's and containing items similar to those observed in the back of defendant's truck. The defendant brought a motion to exclude the evidence seized from the back of his truck as fruits of an illegal seizure of a person. The trial court denied this motion, finding that the police had reasonable suspicion to conduct an investigatory stop of defendant. The defendant then pled guilty, reserving the right to appeal the denial of his motion to suppress. *Id.*

The Court of Appeals affirmed the trial court's ruling. The Court noted that the call upon which the police based their stop of the defendant was more akin to a call from a known citizen than a call from an anonymous tipster, because the police were aware of the address at which the caller lived and actually pulled up in front of the caller's house while the call was still ongoing. The Court accordingly found that the call was sufficiently reliable to provide the police with reasonable suspicion to conduct an investigatory stop of defendant.

Part 2—Individual Motions

6.37 Motion to Suppress Evidence Seized Without a Search Warrant

1. Searches of Automobiles for Evidence

Insert the following text after the partial paragraph at the top of page 102:

Reasonable suspicion that a person has engaged or is engaging in criminal activity may properly be based on a tip from an anonymous caller, where there is sufficient police knowledge of the identity of the caller to render the call reliable. *United States v Long*, ___ F3d ___ (CA 6, 2006).

In *Long*, the police stopped defendant as he approached the freeway in his truck, after receiving a tip from an anonymous caller advising that a burglary was in process and describing a vehicle similar to defendant's and containing items similar to those observed in the back of defendant's truck. The defendant brought a motion to exclude the evidence seized from the back of his truck as fruits of an illegal seizure of a person. The trial court denied this motion, finding that the police had reasonable suspicion to conduct an investigatory stop of defendant. The defendant then pled guilty, reserving the right to appeal the denial of his motion to suppress. *Id.*

The Court of Appeals affirmed the trial court's ruling. The Court noted that the call upon which the police based their stop of the defendant was more akin to a call from a known citizen than a call from an anonymous tipster, because the police were aware of the address at which the caller lived and actually pulled up in front of the caller's house while the call was still ongoing. The Court accordingly found that the call was sufficiently reliable to provide the police with reasonable suspicion to conduct an investigatory stop of defendant.

Update: Domestic Violence Benchbook (3rd ed)

CHAPTER 5

Evidence in Criminal Domestic Violence Cases

5.8 Expert Testimony on Battering and Its Effects

B. Michigan Cases Addressing Evidence of Battering and Its Effects

Effective October 1, 2006, 2006 PA 309 created the Self-Defense Act, MCL 780.971 to 780.974, and broadened the instances in which deadly force may be used to include the honest and reasonable belief that the use of deadly force is necessary to prevent imminent sexual assault.

Insert the following text in place of the **Note** near the middle of page 195:

Note: To establish self-defense, a defendant must honestly and reasonably believe either that the use of deadly force is necessary to prevent the imminent death of, or imminent great bodily harm to, himself or herself, or that the use of deadly force is necessary to prevent the imminent sexual assault of himself or herself. MCL 780.972.

CHAPTER 9

Statutory Firearms Restrictions in Domestic Violence Cases

9.5 Restrictions Arising from Conviction of a Felony

B. Michigan Restrictions on the Purchase or Possession of Firearms by Convicted Felons

Insert the following text after the last paragraph on page 404:

The Michigan Court of Appeals has also rejected a claim that MCL 750.224f, which makes it a crime for a convicted felon to possess a firearm, is unconstitutionally vague. See *People v Pierce*, ___ Mich App ___ (2006).

In *Pierce*, the defendant was convicted of breaking and entering a building. The defendant subsequently was charged with, and convicted of, being a felon in possession of a firearm pursuant to MCL 750.224f. *Pierce, supra* at _____. On appeal defendant argued that it was unclear whether breaking and entering a building was a “specified felony” for purposes of MCL 750.224f, and therefore argued that the statute was unconstitutionally vague. The Court of Appeals disagreed:

“ . . . the ordinary and plain language of MCL 750.224f(6) provides, in clear and understandable terms, that a person who commits a felony involving ‘the use, attempted use or threatened use of force against the person or property of another, or that by its nature, involves a substantial risk that physical force against the person or property of another may be used,’ is subject to the more stringent requirement for restoration firearms rights set forth in MCL 750.224f(2). Breaking and entering is a crime that clearly fits within the language. Therefore the statute provides adequate notice to persons of ordinary intelligence as to the conduct proscribed.” *Pierce, supra* at ____ [citation omitted].

Accordingly, the Court found that MCL 750.224(f) is not unconstitutionally vague. The Court, however, remanded the case to the trial court on another issue.

Update: Michigan Circuit Court Benchbook

CHAPTER 3

Civil Proceedings

Part I—Pleadings, Parties, and Commencement of Action (MCR Subchapters 2.000 and 2.200)

3.1 Jurisdiction and Venue

E. Constitutional Limitations

Insert the following text after the last paragraph before sub-section (F) on page 134:

Where personal jurisdiction is conferred pursuant to a forum selection clause, and where the inconvenience of litigating in another forum is apparent at the time of contracting, that inconvenience is part of the bargain negotiated by the parties and will not render the forum selection clause unenforceable. *Turcheck v Amerifund Financial, Inc.*, ___ Mich App ___ (2006).

G. Standard of Review

Insert the following text after the October 2006 update to page 135:

A trial court's dismissal of an action pursuant to a contractual forum-selection clause is reviewed de novo on appeal. *Turcheck v Amerifund Financial, Inc.*, ___ Mich App ___ (2006).

3.24 Summary Disposition

D. Standards of Review

6. (C)(6): Action Exists Between the Same Parties

Insert the following case summary at the end of the text in this section, at the top of page 177:

The other action initiated between the parties need not be filed within the Michigan courts or within the federal courts located in Michigan in order for summary disposition under MCR 2.116(C)(6) to be proper. *Valeo Switches & Detection Systems, Inc v Emcom, Inc*, ___ Mich App ___(2006).

CHAPTER 4

Criminal Proceedings

Part II—Pretrial Motions and Proceedings (MCR Subchapters 6.000 and 6.100)

4.21 Search and Seizure Issues

E. Was a Warrant Required?

Investigatory Stop (“Terry Stop”)

Insert the following text on page 341 immediately before the beginning of sub-subsection (5):

See also *United States v Long*, ___ F3d ___ (CA 6, 2006) (contraband was properly seized when it was discovered after an officer lawfully stopped the defendant based on information received from an anonymous caller, where the police knew the caller’s address and the police pulled up in front of the caller’s house while the 911 call was still ongoing).